STATE OF FLORIDA,
ex rel. FX ANALYTICS,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON CORPORATION, and DOES 1 through 100, inclusive,

Defendants.

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 2009 CA 4140

FILED UNDER SEAL PURSUANT TO 68.083, Florida Statutes

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FALSE CLAIMS ACT COMPLAINT (QUI TAM ACTION) AND DEMAND FOR JURY TRIAL

Plaintiff/Relator ("Relator"), FX Analytics, for its Complaint against The Bank of New York Mellon Corporation, its predecessors and subsidiaries ("Defendant(s)," "BNY Mellon," and/or "Bank," and DOES 1 though 100 (including all subsidiaries of the above entities), alleges as follows:

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of The State of Florida ("State") for harm suffered by the Florida State Board of Administration and the Florida Retirement System Trust Fund ("FRSTF",) a public pension fund, arising from false claims and statements made and presented by Defendants, their agents, employees and co-conspirators, in violation of the State False Claims Act, Fla. Stat. § 68.081, *et seq.* (the "State False Claims Act" or the "Act").

2. Defendants violated the State False Claims Act by charging FRSTF falsified prices foreign exchange ("FX") rates related to international pension fund transactions, making false statements and creating false records related thereto, and conspiring to commit these offenses. Defendants knowingly and intentionally created and carried out a fraudulent scheme in which they charged FRSTF fictitious, feigned, imaginary and/or falsified FX rates ("Falsified FX Rates") that prevailed during the transaction-days in question, and were not the FX rates at which Defendants actually executed requested FX transactions for FRSTF. Defendants captured the difference between the actual and Falsified FX Rates, thereby damaging FRSTF, a pension fund with assets in excess $120 billion dollars.

3. This scheme dates back at least ten years and has amounted to an estimated current annual fraud nationwide of $500 million dollars. Relator estimates that the portion of the profits falsely and fraudulently generated from Defendants' business with FRSTF since at least 2005 is in excess of $30 million dollars.

4. In addition, in violation of the Act and their duty to report known errors resulting in unwarranted losses and payments by FRSTF to Defendants, to which Defendants failed to remit monies and assets that were the property of FRSTF. Defendants concealed their fraud from FRSTF in order to keep monies of FRSTF to which Defendants were not entitled in violation of the Act and Defendants' fiduciary and contractual obligations to the FRSTF pension fund.

5. The Act provides that any person who knowingly presents, or causes to be presented, to any officer or employee, officer, or agent of the State, a false or fraudulent claim for payment or approval is liable for a per-claim civil penalty of up to $11,000 for each such claim submitted or paid, plus three times the amount of the damages, including consequential

damages, sustained by the State. For purposes of the Act, "knowing" or "knowingly" means that a person possessing actual knowledge of the information acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

6. The Act states that a relator may bring a civil for violations of the Act on behalf of the relator and the State of Florida. The complaint shall be filed under seal and shall remain so for 60 days, without service on the Defendants during that period, and cannot be so served without an Order of the Court.

7. Based on the provisions of the Act, Relator seeks to recover compensatory damages, trebled, and civil penalties arising from the State's payment of falsified foreign exchange rates in connection with international security transactions on behalf of its public pension funds. Defendants' conduct included false or fraudulent claims for payment or approval of false records or statements, that the Defendants knowingly presented, and caused to be presented to an officer or employee of the State; and the Defendants' use of false or fraudulent records and statements to conceal, avoid and decrease the Defendants' obligation to pay money to The State in connection with FX transactions on behalf of FRSTF, and the Defendants' conspiracy to commit these offenses, all in violation of the Act.

8. The affected public pension fund, FRSTF, was kept in such ignorance, that the only constraint on the repetitive theft from the fund was the high (for purchases) and low (for sales) of each particular day's foreign exchange rates, and such wrongdoing is alleged herewith to have continued to the present, and may continue into the future. It is the regular practice of the Defendants' foreign exchange traders and transaction desks, working in conjunction with the Bank's custody department, to leverage every possible foreign exchange transaction for the

exclusive benefit of the Bank: knowing the precise foreign exchange needs of its custody clients, the Bank trades to satisfy its clients' obligations on the interbank market, but then charges a fictitious, feigned and/or imaginary price to the public pension fund client for the trade The fictitious price given to the custody clients allows the Bank to keep a significant illicit-earned profit on the trade.

9. The Defendants' profits from this behavior often results in profits of hundreds of thousands of dollars on a single trade. The Defendants' fraud on their custodial client, FRSTF, occurred – and continues to occur – despite the Bank's contractual and statutory duties, despite the Bank's responsibilities as a fiduciary and the trust it induces the public pension fund to have in the Bank, and despite repeated representations by the Bank as to the benefits of its cutting-edge technology, its advanced claims processing procedures, best execution practices, and the competitiveness of its foreign exchange rates.

10. If the affected governmental public pension fund custody client knew of the Defendants' practices, it would never have allowed them to occur and it never would have hired Defendants to serve in a position of elevated trust on behalf of these government fund.

II. PARTIES

11. Relator, a Delaware general partnership, is named FX Analytics and brings this action for violations of The State False Claims Act, on behalf of itself and the State named herein. The owner of the partnership ("Partner") possesses extensive knowledge and experience regarding the Defendants' bank offices, businesses and personnel, including personal contact with the employees and executives of BNY Mellon (Defendant(s)) who have committed the alleged violations of the Act, as described below. The Partner possesses personal knowledge to support and establish the charges asserted in this Complaint.

12. Pursuant to Section 15-201(a) of the Delaware Revised Uniform Partnership Act, FX Analytics is not distinct from its partner, who has personal knowledge of the aforesaid false claims, statements, concealments, and receipts.

13. Defendant, The Bank of New York Mellon Corporation, is the parent corporation resulting from the July 1, 2007 merger of the Bank of New York Company, Inc. and Mellon Financial Corporation. By July 1, 2008, the Bank had consolidated into two banks and renamed its principal bank and trust companies The Bank of New York Mellon and BNY Mellon, National Association. These entities, along with many others, are primary subsidiaries of the parent corporation, The Bank of New York Corporation. BNY Mellon assumes the liabilities of the corporations merged into it. NY CLS Bank § 602(2). As referred to herein, therefore, general references to BNY Mellon include the merged corporation as well as its constituent, individual predecessor corporations and subsidiaries – unless otherwise noted.

14. BNY Mellon's corporate headquarters is located at One Wall Street, New York, New York, 10286. Its symbol on the New York Stock Exchange is "BK." As of the second quarter of 2009, the BNY Mellon maintained $20.7 Trillion under custody and administration, with $926 Billion under management. "BNY Mellon, At a Glance." http://www.bnymellon.com/news/pdf/factsheet.pdf

15. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 100 are unknown to Relator who therefore sues such Defendants by such fictitious names, and will amend this Complaint to show the true names and capacities of the DOE defendants when ascertained. Relator alleges on information and belief that each Defendant designated as a "DOE" is legally responsible in some manner for the events and happenings alleged in this Complaint.

III. VENUE

16. Venue is proper in Leon County, Tallahassee, Florida because Defendants can be found in, reside in, transact business in, and have a usual place of business in said county, and the State of Floridaand because some of the violations of the Act described herein occurred within this county and the State of Florida. Venue is also proper in this county pursuant to the Act.

IV. DEFENDANTS' FRAUDULENT SCHEME

Background on Defendants' Relationship with the Subdivision funds

16. BNY Mellon's main business lines include Asset Management, Asset Servicing, Wealth Management, Broker-Dealer & Advisor Services, Issuer Services, and Treasury Services. BNY Mellon Asset Servicing is responsible for the custodial Banking at issue in Relator's complaint, and the false and fraudulent foreign exchange fees earned through Defendants' scheme are reported as Asset Servicing income.

17. BNY Mellon serves as the custodian bank for a large number of state and subdivision funds across the country. According to the Bank's 2008 Annual Report, it is "the largest custodian for U.S. public pension plans." In states with *qui tam* statutes, BNY Mellon is responsible, as the custodian Bank, for more than $600 Billion in state and state political subdivision funds. As alleged herein, these are the very FRSTF funds that are directly affected by the Bank's fraudulent claims. It is alleged herein that the Bank's practice is to target these public and governmental FRSTF funds as a custodial client specifically to victimize it by its foreign exchange fraud scheme.

18. In 2008, BNY Mellon reported a record $1.5 Billion in foreign exchange and other trading activity revenue – an increase of $676 Million (86%) over the previous year. For

the years 2002 to 2008, BNY Mellon and its predecessor Banks, have reported more than $5 Billion in foreign exchange trading revenue. As alleged below, the great majority of these profits came directly at the expense of the state and subdivision funds. BNY Mellon's foreign exchange revenue is a cornerstone of the Bank's annual profits and serves as a cash generator responsible for funding the annual bonuses of the entire firm.

19. BNY Mellon's made public and private misrepresentations of its Foreign Exchange Practices in order to induce the public pension fund herein to become its client. It contended that its foreign exchange services were successful, award-winning, and skillful. Its website misleadingly explained the various foreign exchange services that it offered to its custodial clients. One mode of execution, known as "Standing Instruction," was the manner of execution that the Bank induced the government fund herein, FRSTF, and public pension funds universally, to select. This trading method – also known as "Indirect" within the trade and described further herein – funnels all of FRSTF public fund's foreign exchange trades to BNY Mellon for execution.

20. FRSTF choose BNY Mellon Indirect foreign exchange because BNY Mellon misleadingly marketed itself to FRSTF as a cost-saving benefit to its custodial client. BNY Mellon's website is replete with these kinds of misrepresentations, which the Relator alleges to be untrue and intentionally instrumental to the scheme alleged herein:

- "With 24-hour trading capability via New York, Boston, Pittsburgh, London, Brussels, Tokyo, Hong Kong, Seoul, and Tapei, The Bank of New York Mellon is one of the largest FX dealers in the world. We provide coverage for more than 100 currencies and offer a myriad of FX derivative products. Our seasoned dealers offer innovative business solutions . . ."

- "The Bank of New York Mellon Global Markets is a recognized leader in the institutional and corporate global foreign exchange markets. Our foreign exchange specialists are able to provide expert analysis and advice accompanied by a full range of products to support your global business activity."
- "Execution: Our global franchise provides you with 24 hour market coverage. Due to our standing as one of the world's leading custodial Banks, we are an active market-maker in the spot, forward and option markets."
- "Standing Instruction [Indirect Foreign Exchange] trading provide[s] a simple, flexible, and complete service solution that automates the capture of all types of custody-related foreign exchange . . . Operationally simple, free of charge and integrated with the client's activity on the various securities markets, [Foreign Exchange] standing instruction is designed to help clients minimize risks and costs related to the foreign exchange and concentrate on their core business."
- "Standing Instruction Foreign Exchange Clients benefit from: [foreign exchange] execution according to best execution standards . . ."

21. To maintain the enormous illicit profits that BNY Mellon makes from its Indirect foreign exchange custodial client, FRSTF and other similarly positioned public pension funds, the Bank touts the strength of its relationship with those same pensions it defrauds – largely the public fund and governmental pensions that comprise the Indirect clients:

- A Leading Provider For Government Entities: Public pension plans and other government agencies seek to align themselves with a custodian who is a clear leader, one who has the capabilities and experience to help them meet the

numerous challenges facing their organizations today including: Increased regulatory oversight, complex global investing environment, pressure to grow assets while managing with existing or decreasing resources, and corporate governance.

- BNY Mellon Asset Servicing understands the unique needs of public organizations and has worked with their decision-makers to professionally administer their assets.

22. BNY Mellon's representations have little or nothing to do with their actual practices toward the affected state and subdivision pension funds such as FRSTF.

23. Nothing that that the FRSTF Indirect custodial client were ever told comes close to the truth regarding the enormity of the tens of millions of dollars of fraud that has been committed against it.

24. The present market value of the FRSTF is in excess of approximately $130 billion. FRSTF's assets includes a significant percentage of international securities that would require FX transactions. Approximately 19% of the State fund is allocated to international equities and investments. Thus, at present, approximately $25,000,000,000 (twenty-five billion dollars) of State money is subject, daily, to Defendants' fraud.

25. Upon information and belief, Defendants have served as, or are, the pension fund custodian bank for the FRSTF fund enumerated herein.

26. Upon information and belief, the Bank's multi-year revenues from foreign exchange ("FX") related to its public pension fund clients are, nationally, hundreds of millions of dollars per year, of which FRSTF is a significant component.

27. Upon information and belief, the FRSTF has not authorized the Defendants to charge them FX rates related to this client's foreign security transactions other than the actual costs incurred by Defendants in connection with such transactions, and the custodial agreement with Defendants does not authorize the FX fees charged by Defendants in connection with the FX transactions described herein. Moreover, the FRSTF client has never approved the retention by the Defendants of the difference between their actual FX cost and the exaggerated, Falsified FX Rates' amounts falsely charged by Defendants and thereupon paid by or withheld from the FRSTF pension fund.

28. FRSTF never agreed that its master custodian entitled Defendants to any earnings above those specified in the contractual fee agreements with Defendants. Nonetheless, Defendants secretly conferred upon themselves the discretion to charge FRSTF their Falsified FX Rates that were fraudulent and not the actual FX charges incurred or receipts received, and made false claims and statements regarding higher FX rates than were actually paid by Defendants, or lower FX rates than were actually received by Defendants, in connection with purchases and sales of foreign currencies on behalf of FRSTF.

29. The Defendants misappropriated the excess of these two rates, the actual and the fraudulent, feigned and imaginary Falsified FX Rates, for themselves. Under its contracts with FRSTF, Defendants had no right to retain the foregoing monies as "profit" on these FX transactions.

30. Governmental appropriations to FRSTF are required by statute, and these appropriations have been made during the course of Defendants' custodianship of the funds, which amounts to tens of millions of dollars.

31. When funds are wrongly withheld or misappropriated through violations of the Act perpetrated against FRSTF, the State must pay additional monies to FRSTF, which monies otherwise would have been available for essential State services to its citizens. As custodian for FRSTF, Defendants were required to act as fiduciaries with respect to the FRSTF funds held in custody. Over the period of time relevant to this Complaint, FRSTF has paid millions of dollars in custodial fees to the Defendants. FRSTF is underfunded. Indeed, in the current economic climate, fraud against FRSTF is especially pernicious, as the Bank continues to effortlessly generate millions in risk-free revenue while the pension fund struggles to meet funding requirements, despite major losses in value attributable to the economic downturn of the last eighteen months. Compounding the harm of Defendants' fraud is the fact that Defendants offer comprehensive flat-rate fees to be the custodial Bank because the Bank knows it will reap profits from the foreign exchange trading that will greatly exceed their relatively low flat-rate prices. FRSTF, unaware of the fraud and its enormity, was thus persuaded to select the Defendant to serve as custodian. Additionally, as a result of direct losses due to falsely inflated or deflated FX rates, FRSTF suffered an investment loss. Every investment return lost due to BNY Mellon's fraud scheme are funds that FRSTF will not be earning compounded investment returns over the thirty-plus year time horizon of most pension plans, and each such loss will triple each decade.

<u>How Defendants' Fraudulent Foreign Exchange Scheme Worked</u>

32. Upon receipt of a request requiring a FX transaction, Defendants would execute a trade to fill the request at the FX rate available at or close to that time. Defendants thereafter watched the market fluctuation in FX rates related to such transactions over the course of the day (covering a 24-hour period, beginning a 5:00 p.m., Eastern Time) in order to charge the client, FRSTF, a different, less favorable rate than the one at which Defendants actually settled the FX

transaction. Many of the transactions for which Defendants claimed or stated an applicable FX rate that FRSTF was responsible for paying (for "buy" transactions) or for which FRSTF was entitled to a credit from Defendants (for "sell" transactions) were transactions that were feigned or imaginary, and had not occurred and which had not actually been executed by Defendants; Defendants' falsely claimed to have paid a different rate than Defendants had actually paid to settle the trade.

33. If the transaction was a "buy" of a foreign currency, Defendants would charge FRSTF a higher FX rate available at another time in the day, which caused FRSTF to pay more for the FX transaction than what Defendants actually paid. Defendants would keep for themselves the difference between the true cost of the trade and the fictitious or false FX rate Defendants claimed to have paid and charged to the clients. If the transaction that required a FX transaction was instead a "sale" of a foreign currency, Defendants would falsely credit FRSTF with an FX rate available at another time in the day that was lower than what Defendant actually received for the currency, and remit to FRSTF funds an amount less than what Defendants actually received on the behalf of FRSTF.

How the Bank Manipulates Pension Fund Clients

35. Custody clients deal with the BNY Mellon Foreign Exchange group in a variety of ways but the method of dealing foreign exchange can be broken down into to two basic categories: "Direct" or "Indirect." In the "Direct" way of trading, clients trade for their foreign exchange themselves or contract with a third party that executes their FX trades. The key point in the "Direct" process is that it involves a negotiation process between the FX client and the FX provider. The great majority of FX trades are done without a built in commission or fee paid by the client in a transaction. The profit that is gained by the Bank, or the sell side, is generated by dealing at a price with the client where they are able to offset the trade in the interbank market at

a profit. It is a zero sum game; whatever the Bank gains in profit in the transaction becomes a "loss" for or a cost to the client. This fact where one side's gain is the other side's cost can make the negotiating process key to overall profitability for both parties involved.

36. Generally speaking, clients that choose to deal directly with the FX department will accept a price that they negotiated with the Bank on a given transaction. That FX price will be close to where the actual FX market is trading at that time of day when the FX transaction is finalized. Thus, "Direct" clients are able to actively pursue the best price available to them at a particular time, and such clients are protected from additional FX costs caused by olatility in FX rates, whether such volatility occurs before or after the actual trade that the "Direct" client is assured of having occurred. For this reason, the Bank makes very modest profits on Direct trading, because the FX rate that is agreed upon between the Bank and the client must be paid by the Bank, and it has no opportunity to pretend, *i.e.*, be untruthful, that a much different, much more costly FX rate for the client, is what had taken place.

37. The second way of executing foreign exchange transactions, one that is predominately used by public pension fund custody clients, such as FRSTF herein, is the "Indirect" method. "Indirect" foreign exchange trading at BNY Mellon is also referred to by the Bank as "non-negotiated" and "standing instructions dealing."

38. The "Indirect" method involves the custodian, rather than the pension client, overseeing the trade process from start to completion. The client has little or no input in the FX transaction at any point in the process. In addition to the Bank's public descriptions above, the Indirect methodology is also similarly described in the BNY Mellon's FX business plan statement ("Statement") for 2010:

> "Through our standing instruction [Indirect] channel, we provide significant value-added to clients by identifying trade requirements, aggregating and netting exposures, handling

pre-trade administration for regulated market transactions, executing trades in accordance with best execution practices, assuring settlement and reporting trade details to back-end accounting systems – all of which allows us to apply wider margins with the willful acceptance of clients."

39. This statement by the Bank's is not only contradictory on its face (as the Bank's actions are contrary to "best execution practices," and do not add "significant value") but shows that the fraud alleged was knowing and willful. The notion of Indirect clients accepting "margins," also belies BNY Mellon's representation that Indirect trading is done "Free of charge."

40. Profits from Indirect trading are at the heart of the Bank's decision-making processes. When the Bank competes for a custody client, the FX department is consulted and asked to estimate what the Bank's profits will be when and if the Bank were to execute the prospective client's foreign exchange. The Bank looks at what amount of international investments the client presently has and how the Bank might price the deals, directly or indirectly.

41. The FX group will give the custody group a conservative estimate of what the foreign exchange profit potential will be with the prospective client. The custody group then incorporates this estimate into their pricing structure as they make a flat-fee, all inclusive proposal (including all FX costs and fees) to the custody client. The FX department shares some of the profits with the custody group because it understands how valuable the custody stream of indirect deals will be to the FX department.

42. It is alleged herein that when the Bank sold its custodial services to public pension funds, and as it acted with regard to FRSTF, it did so in a way to make it much more likely that FRSTF would have choosen the Bank's bundled services which must, from the Bank's point of view, include the Indirect model of foreign exchange. The Bank prices the overall flat-rate

custody contract in such a way that it would seem foolish for FRSTF – based on the Bank's verbal and written (RFPS, contracts) representations and promises - to consider any other option, *i.e.*, of taking its foreign exchange elsewhere or paying someone else to do it. A public fund such as FRSTF, as was well known by the Defendants who took advantage of this knowledge, did not wish to employ the staff needed to directly negotiate the FX transaction. The Bank provides the rationalization for this by selling the bundled services as a way to promote efficiency and integration of services, while, in reality, it only serves to facilitate the Bank's fraudulent foreign exchange profits.

43. The Indirect public pension fund clients have relied on the Bank's representations that Indirect foreign exchange trading actually uses "best execution practices," or, more significantly, is provided to Indirect clients, "free of charge." The duty of best execution requires that a broker-dealer such as Defendants seek to obtain for its customer orders the most favorable terms reasonably available under the circumstances. That is, the duty of best execution requires the Defendants to execute trades at the best reasonably available price.

44. The Bank not only failed to practice best execution processes, but went well beyond what could be considered best practices by picking a feigned or falsified FX price that was unrelated to the actual FX transactions that had been engaged in by the Bank for the client.

<u>A Step-by-Step Analysis of how the Bank trades Foreign Exchange and Commits the Fraud against its Indirect Custody Clients</u>

45. The following steps occur: (1) Indirect deals begin with the Asset Servicing area of custody. It is there that thousands of security transactions are processed every business day around the globe. An asset, *i.e.*, a stock on a major stock exchange, is purchased for a public pension fund by its investment manager, which generates a need for a foreign exchange transaction in the relevant currency; (2) The pension fund or pension fund's investment manager

communicates with the Bank's Asset Servicing department that an asset trade has taken place and needs a foreign exchange transaction to settle the trade, usually in the form of an Electronic Trade Delivery notice (ETD); (3) the ETD / fax / e-mail trade order communication is entered into the Cash Management System ("CMS") by Asset Servicing within the Bank's custody operation (Bank of New York's equivalent system is called "GSP)." This trade order will include the (a) client name, (b) amount of foreign currency to be traded, (c) currency pair being traded (*e.g.*, buy Japanese Yen and sell United States Dollars or sell Euros and buy United States Dollars), (d) trade date and (e) time stamp of entry into the system; (4) CMS then sends the trade order to the Bank's FX Trading System, "Charlie," where it is reviewed by the Transaction Desk. At this point, the foreign exchange department of the Bank is aware of the need to buy or sell the particular currency. It would be the Indirect client's reasonable and bargained-for expectation, consistent with Best Practices Execution and the Bank's fiduciary duty, that the trade then would occur close in time to its delivery into the trading system after the FX required is entered into Bank's FX Trading System and the Bank's FX Traders watch for currency trends before executing FX trades and, thereafter assigning feigned or imaginary prices to the Indirect funds' trades for which the client would be charged. The FX trader will do an actual trade, in the first instance, in order to satisfy their long and short currency positions. These trades are made based upon the volatility in the market and the likely trend of the exchange rate. The traders know that he or she must have satisfied the buy and sell positions by the cut-off time. The Bank completes an FX trade, but this trading is risk-free, since any market movement that goes against the Bank's positions as a result of the watching and waiting, or as a result of an actual FX transaction, only comes out of the Indirect client's pocket. Rarely, if ever, will the Bank's traders assign to the pension fund trade the FX rate actually obtained by the Bank at the time of

the actual FX trade. The Bank usually uses 1.30 p.m. Eastern (New York) time as a cut-off, allowing the traders to fix their long and short currency positions; (6) Looking Back, the Bank's FX Traders Assign Falsified FX Rates to the Pension Fund's Trade. After the cut-off time and the Bank has made the actual FX transactions necessary to cover the Indirect client's needs, the traders assign a falsified or feigned trade price determined by looking back to the start of the trading day, the previous six or seven hours of the day. The Defendants' FX Traders assign Falsified FX Rates, a process called, "locking the rates," as follows:

A. Higher prices to FX buy orders

B. Lower prices to FX sell orders

46. The only limitation on this false pricing is that the Bank is careful, with some exceptions, to price the trades within the actual high and low range of the day's rates. This is done to deceive an audit of the Indirect client's foreign exchange executions, as such audits typically only look to see if an FX transaction is priced within the range of the day on which it traded.

47. Each Indirect client with a trade in a particular currency pair for that day receives the same price, as determined by the Bank's cherry-picked range-of-the-day pricing. Each Indirect client receives the same rate regardless of when their specific trade need came in to the bank and regardless of the size of the trade need and regardless of when the actual FX trade occurred and the actual FX rate at the time of that trade.

48. Post-Trade Cash Flows analyses are immediately done by the Bank to tabulate its' profits from each completed trade (after the Falsified FX Rate has been assigned to the public pension fund client). The profit from each transaction represents the difference between the falsely high (or low) price assigned to the Indirect client fund and the price the currency actually traded for and paid (or received) by the Bank.

49. A Daily "Reconciliation" Call Between New York and Pittsburgh Transaction Desks is conducted each day as the Bank begins to choose foreign exchange rates, *i.e.,* the Falsified FX Rates, of the false price to charge its Indirect clients transaction. The Pittsburgh Transaction Desk will call the New York Transaction Desk so that they can synchronize their high and low ranges for each currency pair (these telephone calls are made on a private, direct line, and may have been shielded from the Bank's customary policy of recording transactional conversations). This call, done at approximately 2:30 p.m., is made so that any discrepancies between each Transaction Desk's operations are avoided, and, thus, discovery or evidence of the Bank's fraudulent scheme is made less likely. Nonetheless, the fact of no discrepancy between two separate and distinct trading systems separated by thousands of miles establishes the conspiratorial conduct engaged in to hide illicit conduct.

50. Profit and Loss Reporting is done by each Transaction Desk by the maintainance of a running Profit/Loss report that can be generated at any time. The foreign exchange traders review this document in order to keep track of their personal Profit/Loss as well as the Bank's Profit/Loss. In addition, monthly reports are also generated. Both the monthly and daily reports also show year-to-date reporting.

51. End of Month Client Custody Reports are prepared by the Bank on or before mid-month, when FRSTF received their Custody Report for the previous month listing the pension fund's FX currency trades for the previous month by trade date, trade amount, and trade price, *i.e.,* the Falsifed FX Rate (as reported to the custody side of the Bank by its FX traders). This is typically the first time that FRSTF which was an indirect FX client was made aware that it traded FX the previous month. These reports never contain time stamps and there is nothing on the report that would lead an Indirect client to suspect that it had been defrauded on its FX.

52. By not showing the specific time of day at which the actual, as compared to the feigned, FX trade occurred, the Bank does not have to reveal that a trade it knew about at 10:00 a.m., and, therefore, should have executed near that time, has instead been assigned an FX rate that only occurred in the interbank market during mid- or late afternoon.

53. Although the BNY/Mellon merger was effective as of July 1, 2007, the new entity has maintained the separate FX departments and each traded throughout the day independent of the other (except for the end-of-the day reconciliation). Thus, those custody clients such as FRSTF that had previously hired BNY to be their custodian still have their trades executed by the BNY FX desk; those custody clients that had previously hired Mellon to be their custodian still have their trades executed by the Mellon FX desk.

Legacy Mellon Transaction Desk Procedures

54. In the case of legacy Mellon desk in Pittsburgh, the FX trade is sent to the Transaction Desk that is manned by Sue Pfister, Paul Park, and Phyllis Bertok. These three employees are individually responsible for specific currency pairs. Sue Pfister's primary currency is the euro (EUR). Paul Park handles Swiss Francs (CHF), Great British Pounds (GBP), South African Rand (ZAR), and the Scandinavian currencies. Phyllis Bertok focuses on the Canadian Dollar (CAD), Japanese Yen (JPY), Australian Dollar (AUD), New Zealand Dollar (NZD), and the minor Asian currencies. As a group, the three are also responsible for a variety of emerging market currencies.

55. On average the Transaction Desk receives around 2,600 trades a day in this manner, a significant number of which are Indirect trades, a good number of which are for large dollar amounts and become the major source for the traders' illicit Falsified FX Rate scheme. At the Mellon Pittsburgh desk, Indirect transactions' volume totaled \$5.375 billion in July of this year and \$6.025 billion in August. On the Bank's New York desk, it processed at total of \$6.580

billion in the same two months. July and August are two of the slower months of the year for foreign exchange.

56. Indirect deals are processed at Bank's Mellon Pittsburgh desk in the following manner: the trades are delivered in the morning and the Transaction Desk (Sue Pfister, Paul Park, and Phyllis Berkok) will accept these trades up until a cutoff of around 1 to 1:30 PM. There is a cutoff time enforced so they may start the fraudulent pricing of the deals and get their illicit, feigned pricing done by the end of the day. The deals, with imaginary FX rates, will be priced, input into the Bank's FX accounting system, and reported to custody and FRSTF. Once the Bank has done the actual trade, the longer it holds it up in the system for its feigned pricing to the public pension fund, the more time exists for there to be potential volatility in the market and the greater potential movement in the Falsifed FX Rate, exchange rates, which allows for greater fraud when the trades are eventually priced to FRSTF and the Bank's other public and private Indirect clients. Typically, the trading desk has a time window of at least 6 hours in which they will choose the worst price possible for FRSTF in each FX deal.

Legacy Bank of New York Procedures

57. The basic elements of the fraud engaged in in New York, as alleged, are the same at the legacy Transaction Desks of both Bank of New York and Mellon Bank. Their respective procedures, as they relate to the fraud, were in place before the merger. However, besides these general elements, the following specifics pertain to the Bank of New York.

58. As a general matter, Sue Pfister is the Mellon/Pittsburgh employee with the most knowledge of the Bank of New York operations. She is the legacy Mellon representative involved in the process of putting one electronic trading system in place for the two legacy banks. She knows about, and, in fact, orchestrates, the Falsified FX Rates charged to FRSTF.

59. Bank of New York's electronic trading system, "GSP," is less sophisticated than Mellon's CMS system. As a consequence, more persons are needed to organize New York's Indirect flow of trades from the custody department to the Transaction Desk. What CMS automates, *e.g.* the need for the FX transaction and the parameters of the deal – has to be done manually by BNY staffers. BNY does not employ a strict cut-off time for foreign exchange trades on the Transaction Desk. It will accept deals past Mellon's 1:00 PM cut-off. A number of New York staffers take the Indirect deals and price them. FX sales desk people, spot traders, and the Transaction Desk people are all involved. In the afternoon, if there is remaining exposure from the Indirect deals that requires trading, Bill Samella, the chief dealer in NYC, will walk around the Transaction Desk telling the respective spot traders what they need to offset.

60. It is also BNY's practice to occasionally take a deal in the New York morning and price it using the range that has been observed in London time. This practice allows a much longer time frame from which to review and take advantage of the volatility of an FX rate, and, as a consequence, take a bigger Falsified FX Rate spread from the Indirect client.

61. Legacy BNY has been known to give money back when it has been caught by clients pricing the Indirect deals at an exhorbitant FX rate, as alleged herein. Specifically, BNY has on occasion gone beyond the range of the day in pricing some deals and instead used the entire overnight range as well in order to maximize profit. This practice has been challenged, on occasion, by Indirect clients.

Indirect Trade Example

62. An actual trade illustrates the alleged illicit profit-taking on Indirect FX trades: On October 1st of this year, the electronic pipeline from Asset Servicing, known internally as CMS (Cash Management System), showed that the Bank's clients would be selling to the Bank

approximately $12,500,000 United States Dollars. The Bank would be selling them Canadian Dollars in return as they were obligated to pay for security transactions that they had already entered into in Canada.

63. The Transaction Desk was aware of this net client exposure that would be offset that day by 9:30 AM. The USD/CAD had opened the New York morning at 1.0730 (where it would take 1.0730 CAD to equal 1 USD). The currency market fluctuated throughout the day 24/7 and the USD/CAD traded lower ultimately making a low at 9:00 a.m. of 1.0682. This rate, 1.0682, is the worst possible rate one would have received if selling USD and buying CAD in the New York trading session. From that low point the market traded higher and ultimately the USD gained strength and made a high of 1.0847 in the afternoon.

64. The Transaction Desk sold $12,500,000 USD to the trader that covered the USD/CAD on the spot desk, Pat O'Brien. O'Brien covered the position at an average rate of 1.0795. The rate the clients that were selling the USD received was the very worst of the day: 1.0682. There was no risk on the Bank's side of this trade. The profit of buying $12,500,000 USD/CAD at 1.0682 and selling the USD/CAD at 1.0795 would be $134,937.50. Had the clients negotiated this trade as a Direct client instead of as an Indirect client, a "normal" profit might have been 5 to 10 pips (a pip representing one point in market vernacular, *i.e.*, 1.0701 to 1.0706 is 5 pips). A ten pip spread on a $12,500,000 USD/CAD trade would represent a Bank profit that was $11,579 at these rates. This trade was instead hyper-priced to the client at 113 basis points.

65. An fraudulent profit of this size is a common occurrence at the Bank. In fact, the majority of the Bank's FX profits are represented by the execution of these Indirect trades. In 2008, on the Pittsburgh trading desk of BNY Mellon, foreign exchange produced $417,331,504 in profit for the Bank. The portion of this profit directly attributable to Indirect trades – as taken

from the Indirect line item on the Profit/Loss sheet for the year - was $298,055,320 or 71.4% of the total.

66. For 2009, as of September 28, the "Indirect" foreign exchange profits accounted for $189,226,774 of a total of $248,417,151 or 76.2%. These totals would be available on the Bank's internal trading records - the Bank's FX accounting system known as "Charlie." The deals are also recorded in the CMS Internal Transaction Summary report.

67. Indirect clients are also known as ROD or "range of the day" clients where the Bank uses the range of the day to the Bank's full advantage of its scheme of filling them at the high or lows depending on whether they are buyers or sellers, The biggest variables in the Bank's profitability are the amount of monies it processes and the volatility of the currency market. The greater the volatility, the larger the range of Falsified FX Rates; the larger the range, the better ability of the Bank to price the clients at a more profitable rate to the Bank. "Best execution," promised by the Bank, in its fiduciary capacity vis-à-vis the public pension funds, and relied upon by the funds, here is impossible because of the extreme delays in the actual trading (which amounts to risk only incurred by the Indirect client), and because once the trade is actually made, the look-back at the day's range of FX rates victimizes the Indirect clients by virtue of a fraudulent price on their trades charged to them by the Bank.

68. BNY Mellon's system of executing FX trades and assigning Falsified FX Rates for Indirect, pension fund clients was deliberately set up to leverage the day's trading volatility in favor of the Bank and against the interest of the custodial client FRSTF. For instance, at the beginning of the day there is a very narrow trading range for stocks and currencies when compared with the end of the day. If at the beginning of the day a BNY Mellon trader knows that he has to purchase 1,000,000 Euros for a pension fund, the trader also knows that he does

not have to book that trade into the Bank's system until 5:00 p.m. that evening. The trader has been incentivized, *i.e.*, provided a high-paying, stress-free, large bonus job, by his employer, the Bank, to wait to provide a Falsified FX Rate price for the trade to the pension client, although, in fact, the trade may have been executed by the Bank to assure it of a cost of not more than of the actual cost of the FX at 10:00 a.m. However, if that ended the transaction from the Bank's point of view and was the price charged to the client, the Bank's profits would be minimal, because it would have had to have expended the amount at which the FX was actually traded, and would have been merely reimbursed by the client, with no or minimal add-on fees.

69. BNY Mellon itself notes that volatility in foreign currencies was a reason that it was able to increase its FX revenues. This is particularly true when the Bank took undue advantage of such volatility. By fixing their FX positions throughout the day at prices advantageous to the Bank, the Bank cannot lose on a transaction. At worst, the Bank will break even – and even that scenario would mean that the pension was either buying all the way at the high or selling all the way at the low with no margin for the Bank. All that the FX Traders thought that they needed to do to shield their unlawful FX manipulations from scrutiny by their public pension fund clients was to price each trade for the client within the range for that day.

COUNT ONE
Substantive Violations of the Florida State False Claims Act
[Presentation of False or Fraudulent Claims for Payment or Approval]

70. Relator repeats and incorporates by reference the allegations made in Paragraphs 1 through 69 of this Complaint.

71. This is a claim for treble damages and penalties under the Florida State False Claims Act.

72. Through the acts described above, Defendants and their agents and employees knowingly presented or caused to be presented to an officer or employee of the State false or fraudulent claims for payment or approval in order to charge them false foreign exchange rates for foreign currency transactions.

73. FRSTF, unaware of the falsity of the claims presented by Defendants and their agents and employees, paid and continue to pay Defendants for claims that would not be paid if the truth were known.

COUNT TWO
Substantive Violations of the Florida State False Claims Act

False Records or Statements to Get
False or Fraudulent Claims Paid or Approved by the State]

74. Relator repeats and incorporates by reference the allegations made in Paragraphs 1 through 73 of this Complaint.

75. Through the acts described above, Defendants and their agents and employees knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the State.

76. FRSTF, unaware of the falsity of the records and statements made or used by Defendants and their agents and employees, paid and continue to pay Defendants for claims that would not be paid if the truth were known.

COUNT THREE

Substantive Violations of the Florida State False Claims Act

[False Records or Statements to Conceal,
Avoid, or Decrease an Obligation to Pay or Transmit Money to the State]

77. Relator repeats and incorporates by reference the allegations made in Paragraphs 1 through 76 of this Complaint.

78. Through the acts described above, Defendants and their agents and employees knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the State.

79. FRSTF, unaware of the falsity of the records and statements made or used by Defendants and their agents and employees, allowed Defendants to withhold funds belonging to FRSTF that FRSTF would not have allowed to be withheld if the truth had been known.

80. FRSTF, unaware of the falsity of the records and statements made or used by Defendants, were deprived of and continue to be deprived of payments owed to them by Defendants, which would not have occurred had the truth been known.

COUNT FOUR
Substantive Violations of the Florida State False Claims Act

[Conspiracy]

81. Relator repeats and incorporates by reference the allegations made in Paragraphs 1 through 80 of this Complaint.

82. Through the acts described above, Defendants and their agents and employees conspired to defraud the State by getting false or fraudulent claims allowed or paid by FRSTF..

83. FRSTF, unaware of the falsity of the claims presented by Defendants and their agents and employees, paid and continue to pay Defendants for claims that would not be paid if the truth were known.

84. FRSTF, unaware of the falsity of the records and statements made or used by Defendants, were deprived of and continue to be deprived of payments owed to them by Defendants, which would not have occurred if the truth had been known.

WHEREFORE:

As a direct result of Defendants' false records, statements, claims, concealments and omissions, and conspiracies to commit such offenses, FRSTF has been damaged in the amount of tens of millions of dollars in false and fraudulent foreign exchange charges or credits.

Relator prays for judgment against Defendants as follows:

That Defendants cease and desist from violating the Act; that the Court enter judgment against Defendants in an amount equal to three times the amount of damages FRSTF have sustained as a result of Defendants' actions, as well as a civil penalty against each Defendant of $11,000 for each violation of the State of Florida False Claims Act; that Relator be awarded the maximum amount allowed pursuant to the State of Florida False Claims Act, and; that Relator be awarded all costs and expenses of this action, including attorneys' fees, and, that FRSTF and Relator recover all such other relief as the Court deems just and proper.

DEMAND FOR JURY

Plaintiffs respectfully demand a jury trial for the alleged claims.

DATED: October 20, 2009

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